THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.1982 OF 2006

DATED:2.2.2006

Between:

Syed Wajid

…Petitioner

And

The Commissioner, Municipal Corporation of Hyderabad

Office at Tank Bund, Hyderabad and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.1982 OF 2006

ORDER:

The petitioner is tenant of premises (mulgi) No.18-2-505 situated at Falaknuma, Hyderabad. The Municipal Corporation of Hyderabad (MCH) took up the work of widening the road from Charminar to Falaknuma. It is alleged that MCH has not issued notice either to owner of the premises or to petitioner, who is tenant, asking for consent. It is also alleged that the officials of the respondents came to the property on 31.1.2006 and attempted to demolish the building, and later they informed the petitioners that they would come back after two days and directed the petitioners to remove furniture in the premises. Hence, the petitioners contend that any such action without following due process of law is illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Standing Counsel for MCH.

I n **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** this Court considered this aspect of the matter and having regard to the dicta laid down in **M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad** observed as under.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extend all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.
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> In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in *M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad* the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

In this case, the petitioner was allegedly not issued any notice seeking willingness/consent to give advance possession to MCH for the road widening project. After issuing notice by the MCH, if the petitioner is not willing to give consent to give advance possession, needless to mention that Corporation has to initiate action under the provisions of the Land Acquisition Act, 1894. Till then, the petitioner cannot be deprived of his right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The Writ Petition, with the above observations and directions, is accordingly disposed of.

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(V.V.S.RAO, J)

2.2.2006

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*Note: Issue CC tomorrow – 3.2.2006.*

*(B.O)*

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